

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

B C Stocking Distributing
7300 Chevron Way
Dixon, California 95620

CAT 080 012 602

Respondent

Docket HWCA 2003-0366

STIPULATION AND ORDER

Health and Safety Code
Section 25187

INTRODUCTION

The State Department of Toxic Substances Control (Department) and BC Stocking Distributing, Inc. (Respondent) enter into this Stipulation and Order (Order) and agree as follows:

. Respondent operated a hazardous waste transfer and storage facility at 7300 Chevron Way, Dixon, CA 95620 (Facility). In January 2004, Respondent sold the Facility and no longer operates it.

. The Department authorized Respondent to manage hazardous waste by issuance of Consent Order Docket HWCA 97/98-2019, issued on December 31, 1997 and subsequently amended on January 29, 2003. This amendment extends the expiration date of the Consent Order to January 30, 2004 or upon the effective date of the final permit decision by the Department, whichever date is earlier. This consent order states that the Respondent shall operate pursuant to the conditions in the grant of Interim Status that was issued by the Department on December 24, 1993 and reissued on May 27, 1994.

. On June 2, 2002, the Sacramento Superior Court entered an amended stipulated judgment against Respondent, in favor of the People of the State of California, based on violations of the Health and Safety Code at the Facility. (*People v. BC Stocking et al.*, Sacramento Superior Court, No. 99-AS-03746.) Pursuant to the judgment, Respondent is jointly and severally liable for a penalty of \$3.1 million, or less if Respondent complies

with a payment schedule. Respondent is making monthly payments to the Department to satisfy the judgment.

. On October 27, 2003, the Department issued an administrative enforcement order pursuant to its authority under section 25187 of the Health and Safety Code, which authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto. Respondent timely requested a hearing.

VIOLATIONS

. The Department alleges the following violations:

. The Respondent violated California Code of Regulations, title 22, sections 67800.5(c) and 66265.147 in that on or about October 1 to 3, 2003, Respondent failed to submit proof of sudden accidental liability at \$300,000 per occurrence with an annual aggregate of \$600,000. In a letter dated July 15, 2003 from AIG Environmental, the Department of Toxic Substances Control was notified of Commerce and Industry Insurance Company's intent to cancel Respondent's Pollution Legal Liability Select Policy No. 2679515. The effective date of cancellation was September 15, 2003. In a letter dated July 24, 2003, the Department noted that as a Series C Standardized permit applicant, Respondent is required to have and maintain liability at \$300,000 per occurrence with an annual aggregate of \$600,000, exclusive of defense costs. The Department sent another letter, dated October 1, 2003, noting that Respondent violated Cal Code Regs., title 22, section 66265.147 by failing to maintain liability coverage.

. Respondent violated Health and Safety Code, section 25188 in that on or about October 1 to 3, 2003, Respondent failed to comply with a schedule for compliance issued pursuant to Section 25187, i.e., their Consent Order, in that section 10(b) requires the Respondent to demonstrate compliance with the Facility Management Practices certification statement submitted by Respondent with its Standardized Permit Application. The Facility Management Practices certification requires the Respondent, to comply with Title 22, Chapter 15, Article 8, titled Financial Requirements.

- . A dispute exists regarding the alleged violations.
- . The parties wish to avoid the expense of litigation and to ensure prompt compliance.
- . Jurisdiction exists pursuant to Health and Safety Code section 25187.
- . Respondent waives any right to a hearing in this matter.
- . This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.
- . Respondent admits the violations described above.

SCHEDULE FOR COMPLIANCE

. There is no schedule for compliance because Respondent no longer owns or operates the Facility.

. Submittals. All submittals from a Respondent pursuant to this Order shall be sent simultaneously to:

Ms. Patti Barni
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710

and

Ms. Nancy Long
Office of Legal Counsel
Department of Toxic Substances Control
P. O. Box 806
1001 I Street
Sacramento, California 95812-0806

. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document as deemed necessary and approve the document as modified, or
- b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

. Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

. Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PENALTY

. Based on the foregoing, the Department sets the amount of Respondent's penalty at \$41,035.

. Respondent has claimed an inability to pay the penalty, based in part on his obligation to make monthly payments to the Department to satisfy the \$3.1 million judgment in *People v. BC Stocking* (Sacramento Superior Court, No. 99-AS-03746). Respondent has provided the Department with financial information necessary to assess its claim of inability to pay. Having analyzed Respondent's financial information, the Department finds that Respondent is not able to pay the penalty in this case, and therefore reduces the penalty to zero. (See Cal. Code of Regs., tit. 22, § 66272.68, subd. (d).)

OTHER PROVISIONS

. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

. Parties Bound: This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

. "Days" for purposes of this Order means calendar days.

SO STIPULATED.

Dated: January 12, 2005

BC Stocking Distributing by Curtis Stocking

Respondent

Dated: February 4, 2005

(Original signed by Charlene F. Williams)
Charlene F. Williams, Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control